IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6956 OF 2005

Shri. Jaibharat Nivrutti Kamble ... Petitioner

Versus

The Chairman, Maharashtra Administrative Tribunal and two Ors. ... Respondents

Mr. P.P. Chavan with Mr. Vinay Bhate and Mr. K.R. Jagdale for Petitioner.

Mr. Ravi Kadam, Advocate General with Mr. S.R. Nargolkar, Asst. Government Pleader for R. Nos. 1 and 2.

Mr. R.A. Rodrigues for R. No. 3.

CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD,JJ.
DATED : JANUARY 31, 2006

P.C.

. Rule. By consent heard forthwith.

2. The Petitioner who is working as Research Officer in Maharashtra Administrative Tribunal seeks to challenge the order dated 2/3rd September, 2005 whereby Respondent No. 3 has been promoted to the post of Deputy Registrar pursuant to selection

done by Respondent No. 1.

3. The contention as urged on behalf of the Petitioner is that the Respondent No. 3 was not regularly appointed and that being the case, the Respondent No. 3 could not have been considered for promotion to the post of Deputy Registrar. To understand the facts, we may gainfully refer to the affidavit of Mr. K.B. Zinjarde, Registrar. The Maharashtra Administrative Tribunal was constituted sometime in the year 1991. Consequent to that various appointments came to be made in the office of Respondent No. 1. These appointments came to be made either by direct recruitment or on deputation. It is an admitted position that at the relevant time, there were no notified recruitment rules in force. Respondent No. 3 was one such direct recruit. Like Petitioner, the affidavit discloses, various other officers in Class III were recruited without select list by M.P.S.C. The Petitioner's order of appointment is dated 09.04.1991. The Respondent No. 3 was appointed on 11.11.1991. An office order was issued by the then Chairman on 22.10.1992 by which Respondent No. 3

who was appointed as Sheristedar was deemed to be a permanent Government Servant. The Petitioner had filed a petition before this court, being Writ Petition No. 1892 of 1999, which was disposed of by this Court by order dated 17.3.2004. Pursuant to that, by order dated 6.4.2002, M.A.T. passed an order absorbing the Petitioner as regular employee with effect from 17.3.2004 subject to whatever is set out in the said order. The Petitioner came to be promoted on 21.4.1992 to Class I post of Research Officer. Respondent No. 3 was appointed as Research Officer sometime in 1994. A vacancy thereafter arose for the post of Deputy Registrar for which both the Petitioner and Respondent No. 3 were considered. The Respondent No. 3 has thereafter been selected to the post of Deputy Registrar.

4. The issue before us is whether merely because the State of Maharashtra has not approved the appointment of Respondent No. 3, can it be held that Respondent No. 3 was not regularly appointed. It is to be noted that the Petitioner had come on deputation and was directed to be regularised

pursuant to the order of this court.

5. Respondent No. 3 came by way of direct recruitment and an order was issued to regularise him by the Chairman of the Tribunal. It is submitted on behalf of the Petitioner that the Chairman of the Tribunal had no jurisdiction to regularise Respondent No. 3. The fact remains that continuance of Respondent No. 3 has not been challenged from 1991 till date. Similarly, both the Petitioner and Respondent No. 3 have been promoted to the post of Research Officers. At that time also Petitioner did not dispute the promotion of Respondent No. 3 on the ground that Respondent No. 3 was not a regular candidate and was therefore, not eligible for being considered. It is only now, after Respondent No. 3 has served for more than 14 years in the office of Respondent No. 1, that the Petitioner pursuant to his non selection, challenges the appointment of Respondent No. 3.

6. In the instant case, there is no challenge by the Petitioner that Respondent No. 3 was not

meritorious. In other words, between the Petitioner and Respondent No. 3, Respondent No. 3 has been selected, being more meritorious. In these circumstances, it will not be open for the Petitioner at this stage to challenge the selection of the Respondent No. 3 on the ground that his appointment is not regular. The Maharashtra Administrative Tribunal was constituted pursuant to the provisions of the Administrative Tribunals Act as a tribunal specially constituted for hearing applications arising from service conditions. The Act provides for States constituting tribunals in their respective States and that is how Respondent No. 1 M.A.T. came to be constituted. The Chairman of Respondent No. 1 in his capacity as a Chairman made recruitments. Apart from the Petitioner, there are several other employees whose names are set out in the affidavit-in-reply filed on behalf of Respondent No. 1, whose appointments it appears, the State Government has not regularised though they are continuing in office from 1991/1992/1993. These recruitments were not disputed nor were any objections raised by the State Government to such appointments. The fact

that the salary of these employees was being paid would by itself be an indication that their appointments were approved by the State Government. In these circumstances, in our opinion, it will be impermissible to permit the Petitioner to challenge the appointment of Respondent No. 3 before this court after the lapse of nearly 14 years on the ground that his appointment suffers from some irregularities. We therefore, decline to exercise our extra ordinary jurisdiction as the Petitioner has approached this court belatedly and in the meantime, Respondent No. 3 has acquired rights. If Respondent No. 3 had been informed at the threshold that he could not be regularised, it would have been open to Respondent No. 3 to seek employment elsewhere. The fact that the Chairman of the Tribunal issued an order of regularisation in favour of Respondent No. 3 must be held in favour of Respondent No. 3.

7. Our attention however, has been invited by the affidavit filed by the Registrar, that various employees have been appointed and their names have not been forwarded to the M.P.S.C. In our opinion,

at the highest, the State Government should take steps to get the services of such employees regularised, if the employees are otherwise qualified on the date of the appointments, if still, the State of Maharashtra is of the opinion that further orders of regularisation are required. That exercise to be completed within six months from today.

. With above observations, Petition stands disposed of.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)